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HOUSE BILL 179

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CONTROLLED SUBSTANCES; REVISING THE CRIMINAL
OFFENSE OF TRAFFICKING CONTROLLED SUBSTANCES TO INCLUDE THE
DISTRIBUTION AND SALE OF METHAMPHETAMINE, ITS SALTS AND
ISOMERS; EXPANDING THE DEFINITION OF A DRUG-FREE SCHOOL ZONE TO
INCLUDE PRIVATE AND PAROCHIAL SCHOOLS AND PRIVATE PROPERTY
WITHIN ONE THOUSAND FEET OF A SCHOOL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-2 NMSA 1978 (being Laws 1972,
Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled
Substances Act:

A. "administer" means the direct application of a
controlled substance by any means to the body of a patient or
research subject by a practitioner or ~~his~~ the practitioner's

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1 agent;

2 B. "agent" includes an authorized person who acts
3 on behalf of a manufacturer, distributor or dispenser. It does
4 not include a common or contract carrier, public warehouseman
5 or employee of the carrier or warehouseman;

6 C. "board" means the board of pharmacy;

7 D. "bureau" means the narcotic and dangerous drug
8 section of the criminal division of the United States
9 department of justice, or its successor agency;

10 E. "controlled substance" means a drug or substance
11 listed in Schedules I through V of the Controlled Substances
12 Act or rules adopted thereto;

13 F. "counterfeit substance" means a controlled
14 substance that bears the unauthorized trademark, trade name,
15 imprint, number, device or other identifying mark or likeness
16 of a manufacturer, distributor or dispenser other than the
17 person who in fact manufactured, distributed or dispensed the
18 controlled substance;

19 G. "deliver" means the actual, constructive or
20 attempted transfer from one person to another of a controlled
21 substance or controlled substance analog, whether or not there
22 is an agency relationship;

23 H. "dispense" means to deliver a controlled
24 substance to an ultimate user or research subject pursuant to
25 the lawful order of a practitioner, including the

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1 administering, prescribing, packaging, labeling or compounding
2 necessary to prepare the controlled substance for that
3 delivery;

4 I. "dispenser" means a practitioner who dispenses
5 and includes hospitals, pharmacies and clinics where controlled
6 substances are dispensed;

7 J. "distribute" means to deliver other than by
8 administering or dispensing a controlled substance or
9 controlled substance analog;

10 K. "drug" or "substance" means substances
11 recognized as drugs in the official United States
12 pharmacopoeia, official homeopathic pharmacopoeia of the United
13 States or official national formulary or any respective
14 supplement to those publications. It does not include devices
15 or their components, parts or accessories;

16 L. "hashish" means the resin extracted from any
17 part of marijuana, whether growing or not, and every compound,
18 manufacture, salt, derivative, mixture or preparation of such
19 resins;

20 M. "manufacture" means the production, preparation,
21 compounding, conversion or processing of a controlled substance
22 or controlled substance analog by extraction from substances of
23 natural origin or independently by means of chemical synthesis
24 or by a combination of extraction and chemical synthesis and
25 includes any packaging or repackaging of the substance or

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1 labeling or relabeling of its container, except that this term
2 does not include the preparation or compounding of a controlled
3 substance:

4 (1) by a practitioner as an incident to [~~his~~]
5 administering or dispensing [~~of~~] a controlled substance in the
6 course of [~~his~~] the practitioner's professional practice; or

7 (2) by a practitioner, or by [~~his~~] the
8 practitioner's agent under [~~his~~] the practitioner's
9 supervision, for the purpose of or as an incident to research,
10 teaching or chemical analysis and not for sale;

11 N. "marijuana" means all parts of the plant
12 cannabis, including any and all varieties, species and
13 subspecies of the genus Cannabis, whether growing or not, the
14 seeds thereof and every compound, manufacture, salt,
15 derivative, mixture or preparation of the plant or its seeds.
16 It does not include the mature stalks of the plant, hashish,
17 tetrahydrocannabinols extracted or isolated from marijuana,
18 fiber produced from the stalks, oil or cake made from the seeds
19 of the plant, any other compound, manufacture, salt,
20 derivative, mixture or preparation of the mature stalks, fiber,
21 oil or cake, or the sterilized seed of the plant that is
22 incapable of germination;

23 O. "narcotic drug" means any of the following,
24 whether produced directly or indirectly by extraction from
25 substances of vegetable origin or independently by means of

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1 chemical synthesis or by a combination of extraction and
2 chemical synthesis:

3 (1) opium and opiate and any salt, compound,
4 derivative or preparation of opium or opiate;

5 (2) any salt, compound, isomer, derivative or
6 preparation that is a chemical equivalent of any of the
7 substances referred to in Paragraph (1) of this subsection,
8 except the isoquinoline alkaloids of opium;

9 (3) opium poppy and poppy straw, including all
10 parts of the plant of the species *Papaver somniferum* L. except
11 its seeds; or

12 (4) coca leaves and any salt, compound,
13 derivative or preparation of coca leaves, any salt, compound,
14 isomer, derivative or preparation that is a chemical equivalent
15 of any of these substances except decocainized coca leaves or
16 extractions of coca leaves that do not contain cocaine or
17 ecgonine;

18 P. "opiate" means any substance having an
19 addiction-forming or addiction-sustaining liability similar to
20 morphine or being capable of conversion into a drug having
21 addiction-forming or addiction-sustaining liability. "Opiate"
22 does not include, unless specifically designated as controlled
23 under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of
24 3-methoxy-n-methylmorphinan and its salts, dextromethorphan.
25 "Opiate" does include its racemic and levorotatory forms;

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1 Q. "person" means an individual, partnership,
2 corporation, association, institution, political subdivision,
3 government agency or other legal entity;

4 R. "practitioner" means a physician, doctor of
5 oriental medicine, dentist, physician assistant, certified
6 nurse practitioner, clinical nurse specialist, certified nurse-
7 midwife, prescribing psychologist, veterinarian, pharmacist,
8 pharmacist clinician or other person licensed or certified to
9 prescribe and administer drugs that are subject to the
10 Controlled Substances Act;

11 S. "prescription" means an order given individually
12 for the person for whom is prescribed a controlled substance,
13 either directly from a licensed practitioner or the
14 practitioner's agent to the pharmacist, including by means of
15 electronic transmission, or indirectly by means of a written
16 order signed by the prescriber, bearing the name and address of
17 the prescriber, [~~his~~] the prescriber's license classification,
18 the name and address of the patient, the name and quantity of
19 the drug prescribed, directions for use and the date of issue
20 and in accordance with the Controlled Substances Act or rules
21 adopted thereto;

22 T. "scientific investigator" means a person
23 registered to conduct research with controlled substances in
24 the course of [~~his~~] the person's professional practice or
25 research and includes analytical laboratories;

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1 U. "ultimate user" means a person who lawfully
2 possesses a controlled substance for [~~his~~] the person's own use
3 or for the use of a member of [~~his~~] the person's household or
4 for administering to an animal under the care, custody and
5 control of the person or by a member of [~~his~~] the person's
6 household;

7 V. "drug paraphernalia" means all equipment,
8 products and materials of any kind that are used, intended for
9 use or designed for use in planting, propagating, cultivating,
10 growing, harvesting, manufacturing, compounding, converting,
11 producing, processing, preparing, testing, analyzing,
12 packaging, repackaging, storing, containing, concealing,
13 injecting, ingesting, inhaling or otherwise introducing into
14 the human body a controlled substance or controlled substance
15 analog in violation of the Controlled Substances Act. It
16 includes:

17 (1) kits used, intended for use or designed
18 for use in planting, propagating, cultivating, growing or
19 harvesting any species of plant that is a controlled substance
20 or controlled substance analog or from which a controlled
21 substance can be derived;

22 (2) kits used, intended for use or designed
23 for use in manufacturing, compounding, converting, producing,
24 processing or preparing controlled substances or controlled
25 substance analogs;

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1 (3) isomerization devices used, intended for
2 use or designed for use in increasing the potency of any
3 species of plant that is a controlled substance;

4 (4) testing equipment used, intended for use
5 or designed for use in identifying or in analyzing the
6 strength, effectiveness or purity of controlled substances or
7 controlled substance analogs;

8 (5) scales or balances used, intended for use
9 or designed for use in weighing or measuring controlled
10 substances or controlled substance analogs;

11 (6) diluents and adulterants, such as quinine
12 hydrochloride, mannitol, mannite dextrose and lactose, used,
13 intended for use or designed for use in cutting controlled
14 substances or controlled substance analogs;

15 (7) separation gins and sifters used, intended
16 for use or designed for use in removing twigs and seeds from,
17 or in otherwise cleaning and refining, marijuana;

18 (8) blenders, bowls, containers, spoons and
19 mixing devices used, intended for use or designed for use in
20 compounding controlled substances or controlled substance
21 analogs;

22 (9) capsules, balloons, envelopes and other
23 containers used, intended for use or designed for use in
24 packaging small quantities of controlled substances or
25 controlled substance analogs;

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1 (10) containers and other objects used,
2 intended for use or designed for use in storing or concealing
3 controlled substances or controlled substance analogs;

4 (11) hypodermic syringes, needles and other
5 objects used, intended for use or designed for use in
6 parenterally injecting controlled substances or controlled
7 substance analogs into the human body;

8 (12) objects used, intended for use or
9 designed for use in ingesting, inhaling or otherwise
10 introducing marijuana, cocaine, hashish or hashish oil into the
11 human body, such as:

12 (a) metal, wooden, acrylic, glass,
13 stone, plastic or ceramic pipes, with or without screens,
14 permanent screens, hashish heads or punctured metal bowls;

15 (b) water pipes;

16 (c) carburetion tubes and devices;

17 (d) smoking and carburetion masks;

18 (e) roach clips, meaning objects used to
19 hold burning material, such as a marijuana cigarette, that has
20 become too small to hold in the hand;

21 (f) miniature cocaine spoons and cocaine
22 vials;

23 (g) chamber pipes;

24 (h) carburetor pipes;

25 (i) electric pipes;

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- 1 (j) air-driven pipes;
- 2 (k) chilams;
- 3 (l) bonges; or
- 4 (m) ice pipes or chillers; and
- 5 (13) in determining whether an object is drug
- 6 paraphernalia, a court or other authority should consider, in
- 7 addition to all other logically relevant factors, the
- 8 following:
- 9 (a) statements by the owner or by anyone
- 10 in control of the object concerning its use;
- 11 (b) the proximity of the object, in time
- 12 and space, to a direct violation of the Controlled Substances
- 13 Act or any other law relating to controlled substances or
- 14 controlled substance analogs;
- 15 (c) the proximity of the object to
- 16 controlled substances or controlled substance analogs;
- 17 (d) the existence of any residue of a
- 18 controlled substance or controlled substance analog on the
- 19 object;
- 20 (e) instructions, written or oral,
- 21 provided with the object concerning its use;
- 22 (f) descriptive materials accompanying
- 23 the object that explain or depict its use;
- 24 (g) the manner in which the object is
- 25 displayed for sale; and

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1 (h) expert testimony concerning its use;

2 W. "controlled substance analog" means a substance
3 other than a controlled substance that has a chemical structure
4 substantially similar to that of a controlled substance in
5 Schedule I, II, III, IV or V or that was specifically designed
6 to produce effects substantially similar to that of controlled
7 substances in Schedule I, II, III, IV or V. Examples of
8 chemical classes in which controlled substance analogs are
9 found include the following:

- 10 (1) phenethylamines;
- 11 (2) N-substituted piperidines;
- 12 (3) morphinans;
- 13 (4) ecgonines;
- 14 (5) quinazolinones;
- 15 (6) substituted indoles; and
- 16 (7) arylcycloalkylamines.

17 Specifically excluded from the definition of "controlled
18 substance analog" are those substances that are generally
19 recognized as safe and effective within the meaning of the
20 Federal Food, Drug and Cosmetic Act or have been manufactured,
21 distributed or possessed in conformance with the provisions of
22 an approved new drug application or an exemption for
23 investigational use within the meaning of Section 505 of the
24 Federal Food, Drug and Cosmetic Act;

25 X. "human consumption" includes application,

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1 injection, inhalation, ingestion or any other manner of
2 introduction;

3 Y. "drug-free school zone" means a public school,
4 parochial school or private school or property that is used for
5 [~~public~~] school purposes and the area within one thousand feet
6 of the school property line, but it does not mean any post-
7 secondary school; and

8 Z. "valid practitioner-patient relationship" means
9 a professional relationship, as defined by the practitioner's
10 licensing board, between the practitioner and the patient."

11 Section 2. Section 30-31-20 NMSA 1978 (being Laws 1972,
12 Chapter 84, Section 20, as amended) is amended to read:

13 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
14 VIOLATION.--

15 A. As used in the Controlled Substances Act,
16 "traffic" means the:

17 (1) manufacture of [~~any~~] a controlled
18 substance enumerated in Schedules I through V or [~~any~~] a
19 controlled substance analog as defined in Subsection W of
20 Section 30-31-2 NMSA 1978;

21 (2) distribution, sale, barter or giving away
22 of:

23 [~~any~~] (a) a controlled substance
24 enumerated in Schedule I or II that is a narcotic drug; [~~or~~]

25 (b) a controlled substance analog of a

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1 controlled substance enumerated in Schedule I or II that is a
2 narcotic drug; or

3 (c) methamphetamine, its salts, isomers
4 and salts of isomers; or

5 (3) possession with intent to distribute:

6 [~~any~~] (a) a controlled substance
7 enumerated in Schedule I or II that is a narcotic drug; [~~or~~]

8 (b) controlled substance analog of a
9 controlled substance enumerated in Schedule I or II that is a
10 narcotic drug; or

11 (c) methamphetamine, its salts, isomers
12 and salts of isomers.

13 B. Except as authorized by the Controlled
14 Substances Act, it is unlawful for [~~any~~] a person to
15 intentionally traffic. [~~Any~~] A person who violates this
16 subsection is:

17 (1) for the first offense, guilty of a second
18 degree felony and shall be sentenced pursuant to the provisions
19 of Section 31-18-15 NMSA 1978; and

20 (2) for the second and subsequent offenses,
21 guilty of a first degree felony and shall be sentenced pursuant
22 to the provisions of Section 31-18-15 NMSA 1978.

23 C. [~~Any~~] A person who knowingly violates Subsection
24 B of this section within a drug-free school zone [~~excluding~~
25 ~~private property residentially zoned or used primarily as a~~

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1 ~~residence~~] is guilty of a first degree felony and shall be
2 sentenced pursuant to the provisions of Section 31-18-15 NMSA
3 1978."

4 Section 3. Section 30-31-22 NMSA 1978 (being Laws 1972,
5 Chapter 84, Section 22, as amended) is amended to read:

6 "30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
7 DISTRIBUTION PROHIBITED.--

8 A. Except as authorized by the Controlled
9 Substances Act, it is unlawful for ~~any~~ a person to
10 intentionally distribute or possess with intent to distribute a
11 controlled substance or a controlled substance analog except a
12 substance enumerated in Schedule I or II that is a narcotic
13 drug, ~~or~~ a controlled substance analog of a controlled
14 substance enumerated in Schedule I or II that is a narcotic
15 drug or methamphetamine, its salts, isomers and salts of
16 isomers. ~~Any~~ A person who violates this subsection with
17 respect to:

18 (1) marijuana is:

19 (a) for the first offense, guilty of a
20 fourth degree felony and shall be sentenced pursuant to the
21 provisions of Section 31-18-15 NMSA 1978;

22 (b) for the second and subsequent
23 offenses, guilty of a third degree felony and shall be
24 sentenced pursuant to the provisions of Section 31-18-15 NMSA
25 1978;

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1 (c) for the first offense, if more than
2 one hundred pounds is possessed with intent to distribute or
3 distributed or both, guilty of a third degree felony and shall
4 be sentenced pursuant to the provisions of Section 31-18-15
5 NMSA 1978; and

6 (d) for the second and subsequent
7 offenses, if more than one hundred pounds is possessed with
8 intent to distribute or distributed or both, guilty of a second
9 degree felony and shall be sentenced pursuant to the provisions
10 of Section 31-18-15 NMSA 1978;

11 (2) any other controlled substance enumerated in
12 Schedule I, II, III or IV or a controlled substance analog of a
13 controlled substance enumerated in Schedule I, II, III or IV
14 except a substance enumerated in Schedule I or II that is a
15 narcotic drug, ~~[or]~~ a controlled substance analog of a
16 controlled substance enumerated in Schedule I or II that is a
17 narcotic drug or methamphetamine, its salts, isomers and salts
18 of isomers, is:

19 (a) for the first offense, guilty of a third
20 degree felony and shall be sentenced pursuant to the provisions
21 of Section 31-18-15 NMSA 1978; and

22 (b) for the second and subsequent offenses,
23 guilty of a second degree felony and shall be sentenced
24 pursuant to the provisions of Section 31-18-15 NMSA 1978; and

25 (3) a controlled substance enumerated in

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1 Schedule V or a controlled substance analog of a controlled
2 substance enumerated in Schedule V is guilty of a misdemeanor
3 and shall be punished by a fine of not less than one hundred
4 dollars (\$100) or more than five hundred dollars (\$500) or by
5 imprisonment for a definite term not less than one hundred
6 eighty days but less than one year, or both.

7 B. It is unlawful for [~~any~~] a person to distribute
8 gamma hydroxybutyric acid or flunitrazepam to another person
9 without that person's knowledge and with intent to commit a
10 crime against that person, including criminal sexual
11 penetration. For the purposes of this subsection, "without
12 that person's knowledge" means the person is unaware that a
13 substance with the ability to alter that person's ability to
14 appraise conduct or to decline participation in or communicate
15 unwillingness to participate in conduct is being distributed to
16 that person. Any person who violates this subsection is:

17 (1) for the first offense, guilty of a third
18 degree felony and shall be sentenced pursuant to the provisions
19 of Section 31-18-15 NMSA 1978; and

20 (2) for the second and subsequent offenses,
21 guilty of a second degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978.

23 C. Except as authorized by the Controlled Substances
24 Act, it is unlawful for [~~any~~] a person to intentionally create
25 or deliver, or possess with intent to deliver, a counterfeit

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1 substance. ~~[Any]~~ A person who violates this subsection with
2 respect to:

3 (1) a counterfeit substance enumerated in
4 Schedule I, II, III or IV is guilty of a fourth degree felony
5 and shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978; and

7 (2) a counterfeit substance enumerated in
8 Schedule V is guilty of a petty misdemeanor and shall be
9 punished by a fine of not more than one hundred dollars (\$100)
10 or by imprisonment for a definite term not to exceed six
11 months, or both.

12 D. ~~[Any]~~ A person who knowingly violates Subsection A
13 or C of this section while within a drug-free school zone
14 [~~excluding private property residentially zoned or used~~
15 ~~primarily as a residence~~] with respect to:

16 (1) marijuana is:

17 (a) for the first offense, guilty of a third
18 degree felony and shall be sentenced pursuant to the provisions
19 of Section 31-18-15 NMSA 1978;

20 (b) for the second and subsequent offenses,
21 guilty of a second degree felony and shall be sentenced
22 pursuant to the provisions of Section 31-18-15 NMSA 1978;

23 (c) for the first offense, if more than one
24 hundred pounds is possessed with intent to distribute or
25 distributed or both, guilty of a second degree felony and shall

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1 be sentenced pursuant to the provisions of Section
2 31-18-15 NMSA 1978; and

3 (d) for the second and subsequent offenses,
4 if more than one hundred pounds is possessed with intent to
5 distribute or distributed or both, guilty of a first degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978;

8 (2) any other controlled substance enumerated in
9 Schedule I, II, III or IV or a controlled substance analog of a
10 controlled substance enumerated in Schedule I, II, III or IV
11 except a substance enumerated in Schedule I or II that is a
12 narcotic drug, ~~[or]~~ a controlled substance analog of a
13 controlled substance enumerated in Schedule I or II that is a
14 narcotic drug or methamphetamine, its salts, isomers and salts
15 of isomers, is:

16 (a) for the first offense, guilty of a
17 second degree felony and shall be sentenced pursuant to the
18 provisions of Section 31-18-15 NMSA 1978; and

19 (b) for the second and subsequent offenses,
20 guilty of a first degree felony and shall be sentenced pursuant
21 to the provisions of Section 31-18-15 NMSA 1978;

22 (3) a controlled substance enumerated in
23 Schedule V or a controlled substance analog of a controlled
24 substance enumerated in Schedule V is guilty of a fourth degree
25 felony and shall be sentenced pursuant to the provisions of

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1 Section 31-18-15 NMSA 1978; and

2 (4) the intentional creation, delivery or
3 possession with the intent to deliver:

4 (a) a counterfeit substance enumerated in
5 Schedule I, II, III or IV is guilty of a third degree felony
6 and shall be sentenced pursuant to the provisions of Section
7 31-18-15 NMSA 1978; and

8 (b) a counterfeit substance enumerated in
9 Schedule V is guilty of a misdemeanor and shall be punished by
10 a fine of not less than one hundred dollars (\$100) nor more
11 than five hundred dollars (\$500) or by imprisonment for a
12 definite term not less than one hundred eighty days but less
13 than one year, or both.

14 E. Notwithstanding the provisions of Subsection A of
15 this section, distribution of a small amount of marijuana for
16 no remuneration shall be treated as provided in Paragraph (1)
17 of Subsection B of Section 30-31-23 NMSA 1978."

18 Section 4. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2006.